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FREMONT GROUP MANAGEMENT, L.P.

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

12 SIGRID MALICDEM,

13 Plaintiff,

14 v.

15 FREMONT GROUP, L.L.C.; FREMONT
16 GROUP MANAGEMENT, L.P.,

17 Defendants.

Case No. 15-CV-01761-JST

**DEFENDANT FREMONT GROUP
MANAGEMENT, L.P.'S ANSWER TO
THE FIRST AMENDED COMPLAINT**

Action Filed: April 20, 2015

1 Defendant Fremont Group Management, L.P.¹ hereby answers the unverified First
2 Amended Complaint (“FAC”) of Plaintiff Sigrid Malicdem by admitting, denying and alleging as
3 follows:

4 **JURISDICTION AND INTRA-DISTRICT ASSIGNMENT**

5 1. As to Paragraph 1 of the FAC, the allegations set forth contain no factual
6 contentions or assert only legal conclusions, and on that basis Defendant denies the allegations
7 therein.

8 2. As to Paragraph 2 of the FAC, the allegations set forth contain no factual
9 contentions or assert only legal conclusions, and on that basis Defendant denies the allegations
10 therein.

11 **PARTIES**

12 3. As to Paragraph 3 of the FAC, Defendant lacks knowledge or information
13 sufficient to form a belief about the truth of the allegations concerning Plaintiff’s residency.
14 Defendant admits that Plaintiff was formerly employed by Fremont Group Management, L.P. in
15 San Francisco. Except as so admitted, Defendant denies the remaining allegations therein.

16 4. As to Paragraph 4 of the FAC, the allegations are vague as to “Defendant” and on
17 that basis Defendant denies each and every allegation therein.

18 **ADMINISTRATIVE EXHAUSTION**

19 5. As to Paragraph 5 of the FAC, Defendant lacks knowledge or information
20 sufficient to form a belief about the truth of the allegations and on that basis denies each and
21 every allegation therein.

22 6. As to Paragraph 6 of the FAC, Defendant lacks knowledge or information
23 sufficient to form a belief about the truth of the allegations and on that basis denies each and
24 every allegation therein.

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¹ Defendant Fremont Group, L.L.C. was dismissed without prejudice on July 21, 2015. Fremont
Group Management, L.P. is the only remaining defendant in this matter.

1 17. As to Paragraph 17 of the FAC, Defendant lacks knowledge or information
2 sufficient to form a belief about the truth of the allegations and on that basis denies each and
3 every allegation therein.

4 18. As to Paragraph 18 of the FAC, Defendant lacks knowledge or information
5 sufficient to form a belief about the truth of the allegations and on that basis denies each and
6 every allegation therein.

7 19. As to Paragraph 19 of the FAC, Defendant lacks knowledge or information
8 sufficient to form a belief about the truth of the allegations and on that basis denies each and
9 every allegation therein.

10 20. As to Paragraph 20 of the FAC, Defendant admits that Plaintiff requested time off
11 to attend medical appointments and also requested additional work restrictions from Plaintiff's
12 doctor. Defendant lacks knowledge or information sufficient to form a belief about the truth of
13 the remaining allegations and on that additional basis denies each and every additional allegation
14 therein.

15 21. As to Paragraph 21 of the FAC, Defendant admits that Plaintiff's 2014
16 performance review included the highest rating in the "Overall Assessment" section. Except as
17 so admitted, Defendant denies the remaining allegations therein.

18 22. As to Paragraph 22 of the FAC, Defendant admits that Plaintiff's 2014
19 performance review stated that she did a "great job". Except as so admitted, Defendant denies the
20 remaining allegations therein.

21 23. As to Paragraph 23 of the FAC, Defendant denies the allegations therein.

22 24. As to Paragraph 24 of the FAC, Defendant denies the allegations therein.

23 25. As to Paragraph 25 of the FAC, Defendant denies the allegations therein.

24 26. As to Paragraph 26 of the FAC, Defendant denies the allegations therein.

25 27. As to Paragraph 27 of the FAC, Defendant denies the allegations therein.

26 28. As to Paragraph 28 of the FAC, Defendant denies the allegations therein.

1 29. As to Paragraph 29 of the FAC, Defendant admits that on March 4, 2015 Plaintiff
2 emailed Defendant a note from her chiropractor stating, "TTD 3/2/15-3/6/15 RTW 3/9/15".
3 Except as so admitted, Defendant denies the remaining allegations therein.

4 30. As to Paragraph 30 of the FAC, Defendant admits that Plaintiff's managers and a
5 representative from Defendant's human resources department contacted Plaintiff on or about
6 March 3, 2015 and asked her to provide her network administrator account password. Except as
7 so admitted, Defendant denies the remaining allegations therein.

8 31. As to paragraph 31 of the FAC, Defendant denies the allegations therein.

9 32. As to Paragraph 32 of the FAC, Defendant admits that it terminated Plaintiff's
10 employment because she refused to provide her network administrator password. Except as so
11 admitted, Defendant denies the remaining allegations therein.

12 33. As to Paragraph 33 of the FAC, Defendant denies the allegations therein.

13 34. As to Paragraph 34 of the FAC, Defendant denies the allegations therein.

14 35. As to Paragraph 35 of the FAC, Defendant denies the allegations therein.

15 36. As to Paragraph 36 of the FAC, Defendant denies the allegations therein.

16 37. As to Paragraph 37 of the FAC, Defendant denies the allegations therein.

17 38. As to Paragraph 38 of the FAC, Defendant denies the allegations therein.

18 39. As to Paragraph 39 of the FAC, Defendant denies the allegations therein.

19 40. As to Paragraph 40 of the FAC, Defendant denies the allegations therein.

20 **FIRST CAUSE OF ACTION**

21 **(VIOLATION OF THE FAMILY AND MEDICAL LEAVE ACT OF 1993)**

22 41. As to Paragraph 41 of the FAC, Defendant incorporates herein by reference its
23 responses to Paragraphs 1 to 40, above.

24 42. As to Paragraph 42 of the FAC, the allegations set forth contain no factual
25 contentions or assert only legal conclusions, and on that basis Defendant denies the allegations
26 therein.

1 43. As to Paragraph 43 of the FAC, the allegations set forth contain no factual
2 contentions or assert only legal conclusions, and on that basis Defendant denies the allegations
3 therein.

4 44. As to Paragraph 44 of the FAC, the allegations set forth contain no factual
5 contentions or assert only legal conclusions, and on that basis Defendant denies the allegations
6 therein.

7 45. As to Paragraph 45 of the FAC, the allegations set forth contain no factual
8 contentions or assert only legal conclusions, and on that basis Defendant denies the allegations
9 therein.

10 46. As to Paragraph 46 of the FAC, the allegations set forth contain no factual
11 contentions or assert only legal conclusions, and on that basis Defendant denies the allegations
12 therein.

13 47. As to Paragraph 47 of the FAC, the allegations set forth contain no factual
14 contentions or assert only legal conclusions, and on that basis Defendant denies the allegations
15 therein.

16 **SECOND CAUSE OF ACTION**

17 **(VIOLATION OF THE CALIFORNIA FAMILY RIGHTS ACT OF 1991)**

18 48. As to Paragraph 48 of the FAC, Defendant incorporates herein by reference its
19 responses to Paragraphs 1 to 47, above.

20 49. As to Paragraph 49 of the FAC, Defendant lacks knowledge or information
21 sufficient to form a belief about the truth of the allegations and/or the allegations set forth contain
22 no factual contentions or assert only legal conclusions, and on those bases Defendant denies each
23 and every allegation therein.

24 50. As to Paragraph 50 of the FAC, the allegations set forth contain no factual
25 contentions or assert only legal conclusions, and on that basis Defendant denies the allegations
26 therein.

1 51. As to Paragraph 51 of the FAC, the allegations set forth contain no factual
2 contentions or assert only legal conclusions, and on that basis Defendant denies the allegations
3 therein.

4 52. As to Paragraph 52 of the FAC, the allegations set forth contain no factual
5 contentions or assert only legal conclusions, and on that basis Defendant denies the allegations
6 therein.

7 53. As to Paragraph 53 of the FAC, the allegations set forth contain no factual
8 contentions or assert only legal conclusions, and on that basis Defendant denies the allegations
9 therein.

10 54. As to Paragraph 54 of the FAC, the allegations set forth contain no factual
11 contentions or assert only legal conclusions, and on that basis Defendant denies the allegations
12 therein.

13 55. As to Paragraph 55 of the FAC, the allegations set forth contain no factual
14 contentions or assert only legal conclusions, and on that basis Defendant denies the allegations
15 therein.

16 56. As to Paragraph 56 of the FAC, the allegations set forth contain no factual
17 contentions or assert only legal conclusions, and on that basis Defendant denies the allegations
18 therein .

19 **THIRD CAUSE OF ACTION**

20 **(DISCRIMINATION ON THE BASIS OF DISABILITY IN VIOLATION OF THE**
21 **AMERICANS WITH DISABILITIES ACT AS AMENDED BY THE ADA**
22 **AMENDMENTS ACT OF 2008)**

23 57. As to Paragraph 57 of the FAC, Defendant incorporates herein by reference its
24 responses to Paragraphs 1 to 56, above.

25 58. As to Paragraph 58 of the FAC, Defendant lacks knowledge or information
26 sufficient to form a belief about the truth of the allegations and/or the allegations set forth contain
27 no factual contentions or assert only legal conclusions, and on those bases Defendant denies each
28 and every allegation therein.

1 59. As to Paragraph 59 of the FAC, the allegations set forth contain no factual
2 contentions or assert only legal conclusions, and on that basis Defendant denies the allegations
3 therein.

4 60. As to Paragraph 60 of the FAC, the allegations set forth contain no factual
5 contentions or assert only legal conclusions, and on that basis Defendant denies the allegations
6 therein.

7 61. As to Paragraph 61 of the FAC, the allegations set forth contain no factual
8 contentions or assert only legal conclusions, and on that basis Defendant denies the allegations
9 therein.

10 62. As to Paragraph 62 of the FAC, the allegations set forth contain no factual
11 contentions or assert only legal conclusions, and on that basis Defendant denies the allegations
12 therein.

13 63. As to Paragraph 63 of the FAC, the allegations set forth contain no factual
14 contentions or assert only legal conclusions, and on that basis Defendant denies the allegations
15 therein.

16 64. As to Paragraph 64 of the FAC, the allegations set forth contain no factual
17 contentions or assert only legal conclusions, and on that basis Defendant denies the allegations
18 therein.

19 65. As to Paragraph 65 of the FAC, the allegations set forth contain no factual
20 contentions or assert only legal conclusions, and on that basis Defendant denies the allegations
21 therein.

22 66. As to Paragraph 66 of the FAC, the allegations set forth contain no factual
23 contentions or assert only legal conclusions, and on that basis Defendant denies the allegations
24 therein.

25 67. As to Paragraph 67 of the FAC, the allegations set forth contain no factual
26 contentions or assert only legal conclusions, and on that basis Defendant denies the allegations
27 therein.

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FOURTH CAUSE OF ACTION

**(DISCRIMINATION ON THE BASIS OF DISABILITY IN VIOLATION OF THE
CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT)**

68. As to Paragraph 68 of the FAC, Defendant incorporates herein by reference its responses to Paragraphs 1 to 67, above.

69. As to Paragraph 69 of the FAC, Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations and/or the allegations set forth contain no factual contentions or assert only legal conclusions, and on those bases Defendant denies each and every allegation therein.

70. As to Paragraph 70 of the FAC, the allegations set forth contain no factual contentions or assert only legal conclusions, and on that basis Defendant denies the allegations therein.

71. As to Paragraph 71 of the FAC, the allegations set forth contain no factual contentions or assert only legal conclusions, and on that basis Defendant denies the allegations therein.

72. As to Paragraph 72 of the FAC, the allegations set forth contain no factual contentions or assert only legal conclusions, and on that basis Defendant denies the allegations therein.

73. As to Paragraph 73 of the FAC, the allegations set forth contain no factual contentions or assert only legal conclusions, and on that basis Defendant denies the allegations therein.

74. As to Paragraph 74 of the FAC, the allegations set forth contain no factual contentions or assert only legal conclusions, and on that basis Defendant denies the allegations therein.

75. As to Paragraph 75 of the FAC, the allegations set forth contain no factual contentions or assert only legal conclusions, and on that basis Defendant denies the allegations therein.

1 76. As to Paragraph 76 of the FAC, the allegations set forth contain no factual
2 contentions or assert only legal conclusions, and on that basis Defendant denies the allegations
3 therein.

4 **FIFTH CAUSE OF ACTION**

5 **(FAILURE TO PROVIDE REASONABLE ACCOMMODATION ON THE BASIS OF**
6 **DISABILITY IN VIOLATION OF THE CALIFORNIA FAIR EMPLOYMENT AND**
7 **HOUSING ACT)**

8 77. As to Paragraph 77 of the FAC, Defendant incorporates herein by reference its
9 responses to Paragraphs 1 to 76, above.

10 78. As to Paragraph 78 of the FAC, Defendant lacks knowledge or information
11 sufficient to form a belief about the truth of the allegations and/or the allegations set forth contain
12 no factual contentions or assert only legal conclusions, and on those bases Defendant denies each
13 and every allegation therein.

14 79. As to Paragraph 79 of the FAC, the allegations set forth contain no factual
15 contentions or assert only legal conclusions, and on that basis Defendant denies the allegations
16 therein.

17 80. As to Paragraph 80 of the FAC, the allegations set forth contain no factual
18 contentions or assert only legal conclusions, and on that basis Defendant denies the allegations
19 therein.

20 81. As to Paragraph 81 of the FAC, the allegations set forth contain no factual
21 contentions or assert only legal conclusions, and on that basis Defendant denies the allegations
22 therein.

23 82. As to Paragraph 82 of the FAC, the allegations set forth contain no factual
24 contentions or assert only legal conclusions, and on that basis Defendant denies the allegations
25 therein.

26 83. As to Paragraph 83 of the FAC, the allegations set forth contain no factual
27 contentions or assert only legal conclusions, and on that basis Defendant denies the allegations
28 therein.

SIXTH CAUSE OF ACTION

(WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY)

84. As to Paragraph 84 of the FAC, Defendant incorporates herein by reference its responses to Paragraphs 1 to 83, above.

85. As to Paragraph 85 of the FAC, the allegations set forth contain no factual contentions or assert only legal conclusions, and on that basis Defendant denies the allegations therein.

86. As to Paragraph 86 of the FAC, the allegations set forth contain no factual contentions or assert only legal conclusions, and on that basis Defendant denies the allegations therein.

87. As to Paragraph 87 of the FAC, the allegations set forth contain no factual contentions or assert only legal conclusions, and on that basis Defendant denies the allegations therein.

88. As to Paragraph 88 of the FAC, the allegations set forth contain no factual contentions or assert only legal conclusions, and on that basis Defendant denies the allegations therein.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

1. As a separate defense to the FAC and to each cause of action therein, Defendant alleges that the FAC, and each purported cause of action therein, fails to state a claim upon which relief may be granted.

SECOND DEFENSE

2. As a separate defense to the FAC and to each cause of action therein, Defendant alleges that no conduct by or attributable to Defendants was the cause in fact or legal cause of the damages, if any, suffered by Plaintiff.

THIRD DEFENSE

3. As a separate defense to the FAC and to each cause of action therein, Defendant alleges that, should it be determined that Plaintiff has been damaged, then said damages were

1 proximately caused by her own conduct, including her refusal to give Defendant her network
2 administrator password.

3 FOURTH DEFENSE

4 4. As a separate defense to the FAC and to each cause of action therein, Defendant
5 alleges that Plaintiff's claims are barred by the applicable statutes of limitation.

6 FIFTH DEFENSE

7 5. As a separate defense to the FAC and to each cause of action therein, Defendant
8 alleges that Plaintiff, by her acts or omissions, is estopped from asserting any claims upon which
9 she now seeks relief.

10 SIXTH DEFENSE

11 6. As a separate defense to the FAC and to each cause of action therein, Defendant
12 alleges that Plaintiff failed to exhaust her administrative remedies and prerequisites to suit.

13 SEVENTH DEFENSE

14 7. As a separate defense to the FAC and to each cause of action therein, Defendant
15 alleges that Plaintiff's recovery in this action is barred in whole or in part by her failure to
16 exercise reasonable care and diligence to mitigate any damages allegedly accruing to her.

17 EIGHTH DEFENSE

18 8. As a separate defense to the FAC and to each cause of action therein, Defendant
19 alleges that Plaintiff failed to comply with California Labor Code sections 2854, 2856, 2858 and
20 2859 to the extent that Plaintiff failed to use ordinary care and diligence in the performance of her
21 duties, failed to substantially comply with the reasonable directions of her alleged employer, and
22 failed to exercise a reasonable degree of skill in performing her job duties.

23 NINTH DEFENSE

24 9. As a separate defense to the FAC and to each cause of action therein, Defendant
25 alleges that recovery by Plaintiff is barred in whole or in part by the doctrines of *in pari delicto*,
26 unclean hands and/or after-acquired evidence.

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TENTH DEFENSE

10. As a separate defense to the FAC and to each cause of action therein, Defendant alleges that the alleged actions complained of by Plaintiff were not based upon discriminatory reasons, but were based upon legitimate, non-discriminatory, job-related reasons.

ELEVENTH DEFENSE

11. As a separate defense to the FAC and to each cause of action therein, Defendant alleges that Plaintiff is barred from any recovery in this action because Defendant's conduct was a just and proper exercise of managerial discretion and business judgment.

TWELFTH DEFENSE

12. As a separate defense to the FAC and to each cause of action therein, Defendant alleges that to the extent that unlawful reasons were motivating factors for any of the conduct alleged in the FAC, which Defendant denies, legitimate reasons, standing alone, would have induced Defendant to make the same employment decisions.

THIRTEENTH DEFENSE

13. As a separate defense to the FAC and to each cause of action therein, Defendant alleges that liability may not be imposed upon Defendant for the acts complained of because Defendant exercised reasonable care to prevent and correct promptly any alleged discriminatory, retaliatory or otherwise unlawful behavior and Plaintiff unreasonably failed to take advantage of preventive or corrective opportunities provided or to avoid harm otherwise.

FOURTEENTH DEFENSE

14. As a separate defense to the FAC and to each cause of action therein, Defendant alleges that liability may not be imposed upon it for the acts complained of because those acts, if any, were not committed within the course and scope of employment of any employee of Defendant and/or because Defendant took prompt and appropriate action upon learning of the alleged acts.

FIFTEENTH DEFENSE

15. As a separate defense to the FAC and to each cause of action therein, Defendant alleges that it was not reasonable and an undue hardship to accommodate Plaintiff's alleged disability.

SIXTEENTH DEFENSE

16. As a separate defense to the FAC and to each cause of action therein, Defendant alleges that Plaintiff was unable to perform the essential job duties with or without reasonable accommodation.

SEVENTEENTH DEFENSE

17. As a separate defense to the FAC and to each cause of action therein, Defendant alleges that at all times and places mentioned in the FAC, Defendant acted without malice and with a good faith belief in the propriety of its conduct.

EIGHTEENTH DEFENSE

18. As a separate defense to the FAC and to each cause of action therein, Defendant alleges that it cannot be liable for punitive damages because, at the time of the alleged acts or omissions giving rise to Plaintiff's claims for punitive damages, Defendant had implemented in good faith one or more policies prohibiting the alleged acts or omissions and/or had otherwise made good faith efforts to comply with the applicable law.

NINETEENTH DEFENSE

19. As a separate defense to the FAC and to each cause of action therein, Defendant alleges that Plaintiff fails to state facts sufficient to support an award of compensatory damages against Defendant.

TWENTIETH DEFENSE

20. As a separate defense to the FAC and to each cause of action therein, Defendant alleges that Plaintiff fails to state facts sufficient to support an award of exemplary, punitive, liquidated and/or emotional distress damages against Defendant, as a result, in part, of the false nature of her allegations. Moreover, any award of punitive damages in this case would violate the

1 due process, equal protection and excessive fines provisions of the California and United States
2 Constitutions.

3 TWENTY FIRST DEFENSE

4 21. As a separate defense to the FAC and to each cause of action therein, Defendant
5 alleges that the exclusive remedy, if any, for some or all of the damages alleged by Plaintiff is
6 under the California Workers' Compensation Act, Cal. Lab. Code § 3200, *et seq.*

7 Defendant has insufficient knowledge or information on which to form a belief as to
8 whether it has any additional, as yet unstated, defenses available. Defendant reserves the right to
9 assert additional defenses in the event discovery indicates it would be appropriate to do so as well
10 as counterclaims

11 PRAYER

- 12 1. That the FAC be dismissed with prejudice and that Plaintiff take nothing thereby;
13 2. That judgment be entered in favor of Defendant on all claims;
14 3. For Defendant's costs of suit herein, including reasonable attorney's fees; and
15 4. For such other and further relief as the Court deems just.

16 Dated: August 13, 2015

LYNNE C. HERMLE
SHANNON B. SEEKAO
Orrick, Herrington & Sutcliffe LLP

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19 By: Shannon B. Seekao
20 SHANNON B. SEEKAO
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23 L.P.
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